SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 12 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-429

SOHIO PETROLEUM COMPANY,

Petitioner,

vs

OIL TRANSPORT COMPANY and GREENVILLE TOWING COMPANY,

Respondents.

BRIEF IN OPPOSITION TO GRANT OF WRIT OF CERTIORARI

Eberhard P. Deutsch,
Hibernia Bank Building,
New Orleans 70112.
Counsel for Respondents.

Deutsch, Kerrigan & Stiles
Brunswick G. Deutsch
Christopher Tompkins
Malcolm W. Monroe,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO.

SOHIO PETROLEUM COMPANY,

Petitioner,

vs

OIL TRANSPORT COMPANY and GREENVILLE TOWING COMPANY,

Respondents.

BRIEF IN OPPOSITION TO GRANT OF WRIT OF CERTIORARI

The case involves a shipper (Sohio) which successfully defended an action for the deaths of two seamen, and now seeks to recover its expenses of litigation from the carrier.

The shipper avers, in its application for a writ, that "the experienced carrier furnished the appropriate equipment to perform the contract", but rests its claim on the implied warranty under the contract of affreightment, that "responsibility for workmanlike . . . unloading was upon the" carrier (Pet. p. 13).

The District Court found that the "general manager

of Sohio temporarily took command of unloading the cargo. While in command he directed the activities of the crew in the unloading operation. During this period" the men "entered the tank where the oil was stored, and were suffocated" (Pet. p. A 13).

The Court of Appeals held that the case, on its facts, did not fall within the rule of *Ryan Stevedoring Co. vs Pan Atlantic SS Corp.*, 350 US 124, in which a stevedore, who had warranted workman-like performance, was held liable to a shipowner for the consequences of negligent stowage (445 F2d 435, at p. 438).

In *General Electric Co. vs Moretz*, 270 780 (1959), the Fourth Circuit held that a motor carrier was liable over to the shipper for damages incurred for injury to a truck-driver as a result of the carrier's negligent stowage. And in *American Export Lines vs Norfolk Shipbuilding and Drydock Co.*, 336 F2d 184 (1964), the Fourth Circuit held a shipyard liable for expenses of the shipowner in successfully defending an action for damages to a shipyard employee injured by the shipyard's negligence.

In the instant case, the Fifth Circuit, holding that the carrier was not negligent, did not disagree with the Fourth. It merely said that it "has never gone so far as" the Fourth Circuit, and that the opinion in *Moretz* "has been roundly criticized", and "distinguished almost as often as it has been followed" (445 F2d at p. 437-438—footnote 2). There is no divergence between the Circuits.

It is respectfully submitted that in the case at bar, the carrier was not negligent, that the case does not fall,

on its facts, within the rule of the Ryan case, that the judgment was correct and that the writ should be refused.

Eberhard P. Deutsch,
Hibernia Bank Building,
New Orleans 70112.
Counsel for Respondents.

Deutsch, Kerrigan & Stiles
Brunswick G. Deutsch
Christopher Tompkins
Malcolm W. Monroe,
Of Counsel.

CERTIFICATE OF SERVICE

It is certified that copies of the foregoing brief in opposition to grant of certiorari were mailed, with first-class postage prepaid, this date, to counsel of record for petitioner at his Post Office address.

New Orleans, October , 1971.

SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 21 1971
E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-429

SOHIO PETROLEUM COMPANY,
Petitioner,

vs.

OIL TRANSPORT COMPANY and GREENVILLE TOWING COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR GREENVILLE TOWING COMPANY, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HAROLD R. DEMOSS, JR.
BRACEWELL & PATTERSON
First City National Bank Building
Houston, Texas 77002

JAMES L. ROBERTSON
CAMPBELL, DELONG, KEADY,
ROBERTSON & HAGWOOD
119 North Broadway
Greenville, Mississippi 38701

Counsel for Respondent, Greenville Towing Company

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

TABLE OF CONTENTS

Table of Authorities II
Introduction 1
Opinions Below 3
Jurisdiction 4
Questions Presented 4
Statement of the Facts 4
Reasons for Denying Certiorari 6

(a) The Decision of the Court of Appeals Does Not Conflict with the Decision of the U. S. Court of Appeals for the Fourth Circuit in *General Electric Company* v. *Moretz* 6

(1) The Fourth Circuit's Decision in *Moretz* Is in No Way a *Ryan*-Compelled Decision 6

(2) The Posture of the Indemnitors Here and in *Moretz* Are Significantly Different 8

(3) The Nature and Source of Indemnity Here and in *Ryan* Are Different from That in *Moretz* 8

(4) The Fourth Circuit Has Never Considered *Moretz* to Be in the Mainstream of Developing *Ryanism* 10

(b) The Fifth Circuit's Interpretation of the *Ryan* Doctrine Is Correct 11

(c) This Is Not a Proper Case for Resolving Any Conflict Between the Fourth and Fifth Circuits Because There Is an Independent Basis upon Which the Judgment Below Must Be Sustained 17

Conclusion 21
Certificate of Service 22

Table of Authorities

CASES

American Export Lines v. *Norfolk Shipbuilding & Drydock Corporation*, 336 F.2d 525 (4 Cir., 1964) 10
Atlantic and Gulf Stevedores, Inc. v. *Ellerman Lines, Ltd.*, 369 U.S. 355 (1962) 19
Casella v. *Norfolk & Western Railway Co.*, 381 F.2d 473 (4 Cir., 1967) 11
Centraal Stikstof Verkoopkanter, N.V. v. *Walsh Stevedoring Company*, 380 F.2d 523 (5 Cir., 1967) 13
Crumady v. *The Joachim Hendric Fisser*, 358 U.S. 423 (1959) 11
Delta Engineering Corporation v. *Scott*, 322 F.2d 11 (5 Cir., 1963) 13
General Electric Company v. *Moretz*, 270 F.2d 780 (4 Cir., 1959) cert. den. 361 U.S. 964 (1960) 6
Grigsby v. *Coastal Marine Service of Texas, Inc.*, 412 F.2d 1011 (5 Cir., 1969), cert. dis. 396 U.S. 1033 (1970) 13
Halliburton Company v. *Norton Drilling Company*, 302 F.2d 431 (5 Cir., 1962) 13
International Terminal Operating Co. v. *N. V. Nederl. Amerik Stoomv Maats.*, 393 U.S. 74 (1968) 19
Italia Societa v. *Oregon Stevedoring Co.*, 376 U.S. 315 (1964) 11
Loffland Brothers Company v. *Roberts*, 386 F.2d 540 (5 Cir., 1967), cert. denied 389 U.S. 1040 (1967) 13, 14, 15
Mahnich v. *Southern S. S. Co.*, 321 U.S. 96 (1944) 11
Morris v. *Uhl & Lopez Engineers, Inc.*, 442 F.2d 1247 (10 Cir., 1971) 17
Norfolk & Western Railway Co. v. *Anderson's-Black Rock, Inc.*, 350 F.2d 917 (4 Cir., 1965) 11
Ocean Drilling & Exploration Co. v. *Berry Brothers Oil Field Service, Inc.*, 377 F.2d 511 (5 Cir., 1967) cert. denied 389 U.S. 849 (1967) 13, 14, 15
Rederi A/B Dalen v. *Maher*, 303 F.2d 565 (4 Cir., 1962) 10

Ryan Stevedoring Company v. *Pan-Atlantic Steamship Corporation*, 350 U.S. 124 (1956) 1
S/S Monrosa v. *Carbon Black Export*, 359 U.S. 180 (1959) 20
Schwartz v. *Compagnie Generale Transatlantique*, 405 F.2d 270 (2 Cir., 1968) 15, 16
Seas Shipping Co. v. *Sieracki*, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099 (1946) 12
Smith Petroleum Service, Inc. v. *Monsanto Chemical Co.*, 420 F.2d 1103 (5 Cir., 1970) 13
The Osceola, 189 U.S. 158 (1903) 11
West v. *United States*, 361 U.S. 118 (1959) 10
Weyerhaeuser Steamship Co. v. *Nacirema Operating Co.*, 355 U.S. 563 (1968) 11, 19

STATUTES

Jones Act, 46 U.S.C., §688 8
Judicial Code, 28 U.S.C., §1254 4

OTHER AUTHORITIES

Bue, *Admiralty Law in the Fifth Circuit—a Compendium for Practitioners*, 4 Houston L. Rev. 347 (1966) 13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-429

SOHIO PETROLEUM COMPANY,
Petitioner,

vs.

OIL TRANSPORT COMPANY and GREENVILLE TOWING COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR GREENVILLE TOWING COMPANY, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

This case involves an attempt by Petitioner to extend the doctrine of *Ryan Stevedoring Company* v. *Pan-Atlantic Steamship Corporation*, 350 U.S. 124 (1956), far beyond anything contemplated by this Court when that case was decided. Recognizing that this case was a far cry from being within the scope of the *Ryan* indemnity, both the United States District Court for the Northern District of

Mississippi and the United States Court of Appeals for the Fifth Circuit rejected Petitioner's contentions (though for different reasons). Here the Court of Appeals has not rendered a decision in conflict with the decision of another Court of Appeals on the same matter, nor has the Court of Appeals decided an important question of federal law which has not been, but should be, settled by this Court. Rather, the Court of Appeals' decision is fully consistent with the spirit and intent of a doctrine enunciated by this Court in 1956 and undisturbed by this or any other court since that time. There being no special or important reasons for the granting of this Petition for Certiorari, Respondent respectfully submits that the Petition should be denied.

The cast of characters in this case is as follows:

(1) Sohio Petroleum Company, the shipper and owner of a cargo of Wyoming Sour Crude Oil, was the original Defendant, was the original Third Party Plaintiff, and is the Petitioner here. Sohio Petroleum Company is hereafter referred to as "Sohio".

(2) Oil Transport Company, the contracting carrier under the "Liquid Cargo Charter Party" was one of two of the original Third Party Defendants and is one of the Respondents here. Oil Transport Company is hereinafter referred to as "Oil Transport".

(3) This Respondent, Greenville Towing Company, was the subcontracting carrier of the particular shipment of crude oil at the time of the casualty which gave rise to this case and is one of the Third Party Defendants named by Sohio, and became a Third Party Plaintiff in its own right against the original Plaintiffs. Greenville Towing Company is hereafter referred to as "Greenville".

(4) W. W. Hobart, Administrator of the Estate of Kenneth Ray McClure Hobart, Deceased, and H. L. Jones, Administrator of the Estate of Roy Lorenzo Jones, Deceased, were the original Plaintiffs in this cause. These parties have been made Third Party Defendants by the Third Party Complaint of Greenville. For convenience they are hereafter referred to as "Hobart".

OPINIONS BELOW

The opinion of the United States Court of Appeals, dated June 29, 1971, for the review of which Petitioner seeks certiorari here, is reported in 445 F.2d 435, and is attached to the Petition for Writ of Certiorari as Appendix "A", pp. A1-A10.

The opinion of the United States District Court for the Northern District of Mississippi dated February 12, 1970, is not reported but is appended to the Petition for Writ of Certiorari as Appendix "B", pages A11-A19.

The opinion of the United States Court of Appeals for the Fifth Circuit dated May 15, 1967, is reported at 376 F.2d 1011 and is appended to the Petition for Writ of Certiorari as Appendix "C", pages A19-A20. This opinion affirms the original District Court judgment in favor of Sohio and against Hobart.

The opinion of the United States District Court for the Northern District of Mississippi dated June 29, 1966 is reported at 255 F. Supp. 972 and is appended to the Petition for Writ of Certiorari as Exhibit "D", pages A21-A37. This opinion adjudicates the original controversy between Hobart and Sohio.